



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

907-82004

APPLICATION:

Application for Waiver of Inadmissibility pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent disclosure of information  
invasion of personal privacy

**DISCUSSION:** The application for waiver of inadmissibility was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on certification. The decision will be affirmed.

The director denied the waiver application because the applicant was otherwise ineligible for temporary residence in the legalization program. The director reasoned that there would be no purpose in granting a waiver that could not assist the applicant in gaining temporary residence.

On appeal, counsel maintains that the law and regulations do not preclude a waiver for a lack of continuous residence.

The applicant was deported from the United States on September 19, 1982, and illegally reentered shortly thereafter. He is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, which relates to aliens who were deported and did not remain outside of the United States for 10 years. Pursuant to section 245A(d)(2)(B)(i) of the Act, such inadmissibility may be waived in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

Counsel provided significant indications of the applicant's equities in the United States. Nevertheless, the director denied the waiver application because the applicant cannot otherwise qualify for legalization because he fails to meet the "continuous residence" provision of the legalization program. Counsel's assertion that a lack of continuous residence in such circumstances may be waived is unpersuasive. He has cited no authority to support his contention. The continuous residence requirement is an integral part of the legalization program and is in fact the primary requirement.

An applicant for temporary residence must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. 1255a(a)(2). An alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside of the United States under an order of deportation. Section 245A(g)(2)(B)(i) of the Act, 8 U.S.C. 1255(g)(2)(b)(i).

As a result of the deportation, the applicant did not reside continuously in the United States for the requisite period. He is therefore statutorily ineligible for temporary residence on that basis.

Congress provided no relief in the legalization program for failure to maintain continuous residence due to a departure under an order of deportation. Relief is provided in the Act for absences based on factors other than deportation, namely absences due to emergencies and absences approved under the advance parole provisions. Clearly, with respect to maintenance of continuous residence, it was not congressional intent to provide relief for absences under an order of deportation.

Counsel points out that the only grounds of inadmissibility that cannot be waived in the legalization program relate to serious offenses such as criminality, terrorism and subversion. These general grounds

of inadmissibility are set forth in section 212(a) of the Act, and relate to any alien seeking a visa or admission into the United States, or adjustment of status. Counsel correctly states that the applicant's inadmissibility under section 212(a)(9) for having been deported and having returned to the United States without authorization may be waived. However, an alien's inadmissibility under section 212(a) of the Act is an entirely separate issue from the continuous residence issue discussed above. While the applicant's failure to maintain continuous residence, and his inadmissibility for having been deported and having returned without authorization, are both predicated on the deportation, a waiver is possible only for the inadmissibility under section 212(a)(9).

In support of his decision to deny the waiver application, the director cited *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) and *Matter of J-F-D-* 10 I&N Dec. 694 (Reg. Comm. 1963). Both decisions relate to applications for permission to reapply for admission after deportation filed by aliens long before the legalization program, yet the decisions are on point and relevant to the current proceedings. In each case the Regional Commissioner clearly found that no purpose would be served in granting an application when the alien was ineligible for the overall benefit.

It is concluded that the director's decision to deny the waiver application because no purpose would be served in granting it was proper, logical and legally sound. Therefore, it shall remain undisturbed.

**ORDER:** The decision is affirmed, and the application remains denied.